

AMENDED IN ASSEMBLY APRIL 9, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2643

Introduced by Assembly Member Wieckowski

February 21, 2014

An act to add Section 48.95 to the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2643, as amended, Wieckowski. Invasion of privacy: distribution of sexually explicit materials.

Existing law makes it a crime for a person to distribute, with the intent to cause serious emotional distress, a photograph or recorded image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, if the depicted person subsequently suffers serious emotional distress.

This bill would create a private right of action against a person who intentionally or recklessly distributes a photograph or recorded image of another that exposes the intimate body parts, *as defined*, of that person or him or her engaged in a sexual act, without his or her consent, if specified conditions are met, ~~including that the person depicted suffer emotional distress~~. The bill would establish affirmative defenses to that cause of action, including waiver or consent of the person appearing in the material. In a civil proceeding pursuant to these provisions, the bill would also authorize equitable relief, as specified, and ~~substituting a plaintiff to proceed using a pseudonym for the~~ *instead of his or her true name of the plaintiff. The bill would require a plaintiff using a pseudonym in a civil proceeding under these provisions to file a*

confidential information form, as specified. The bill would make these provisions operative July 1, 2015.

This bill would further require the Judicial Council to develop that confidential information form by July 1, 2015.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 48.95 is added to the Civil Code, to read:
2 48.95. (a) A private cause of action lies against a person who
3 intentionally or recklessly distributes *by any means* a photograph,
4 film, videotape, recording, or any other reproduction of another,
5 without his or her consent, ~~if all of the following are met: the~~
6 *distributed material exposes an intimate body part of the other*
7 *person, or shows the other person engaging in an act of sexual*
8 *penetration or other sexual act.*
9 ~~(1) The distributed material exposes an intimate body part of~~
10 ~~the other person, or shows the other person engaging in an act of~~
11 ~~sexual penetration or other sexual act.~~
12 ~~(2) The distribution of the material causes emotional distress to~~
13 ~~the other person.~~
14 (b) As used in this section, “intimate body part” means any
15 portion of the genitals, and, in the case of a female, also includes
16 any portion of the breast below the top of the areola, that is
17 uncovered or visible through less than fully opaque clothing.
18 ~~(b)~~
19 (c) There shall be no liability on the part of the person
20 distributing material under subdivision (a) under any of the
21 following circumstances:
22 (1) The distributed material was created under an agreement by
23 the person appearing in the material for its public use and
24 distribution or otherwise intended by that person for public use
25 and distribution.
26 (2) The person possessing or viewing the distributed material
27 has permission from the person appearing in the material to ~~possess~~
28 ~~or view~~ *publish or post* the material.
29 (3) The person appearing in the material waived any expectation
30 of privacy in the distributed material by ~~distributing it to a~~

1 ~~substantial number of persons making it accessible to the general~~
2 ~~public.~~

3 (4) The distributed material constitutes a matter of public
4 concern.

5 (e)

6 (d) In addition to any other relief, the court may order equitable
7 relief against the person violating subdivision (a), including a
8 temporary restraining order, or a preliminary injunction or a
9 permanent injunction ordering the defendant to remove the
10 distributed material. The court may grant injunctive relief
11 substituting a pseudonym for the true name of the plaintiff pursuant
12 to subdivision (d). The court may also grant, after holding a
13 properly noticed hearing, reasonable attorneys fees and costs to
14 the prevailing party.

15 (d)

16 (e) (1) ~~In A plaintiff in a civil proceeding pursuant to subdivision~~
17 ~~(a), the court shall substitute~~ *may proceed using* a pseudonym,
18 *either John Doe, Jane Doe, or Doe,* for the true name of the
19 ~~plaintiff. The actual name and plaintiff and may exclude or redact~~
20 ~~from all pleadings and documents filed in the action other~~
21 ~~identifying characteristics of the plaintiff shall be revealed to the~~
22 ~~court only in camera, and the court shall seal that information from~~
23 ~~further revelation, except to defense counsel as part of discovery.~~
24 *A plaintiff who proceeds using a pseudonym and excluding or*
25 *redacting identifying characteristics as provided in this section*
26 *shall file a confidential information form for this purpose that*
27 *includes the plaintiff's name and other identifying characteristics*
28 *excluded or redacted. The court shall keep the plaintiff's name*
29 *and excluded or redacted characteristics confidential. Nothing in*
30 *this section restricts the defendant's right to discovery from the*
31 *plaintiff of information contained in the confidential information*
32 *form.*

33 (2) All court decisions, orders, petitions, and other documents,
34 including motions and papers filed by the parties, shall be worded
35 so as to protect the name or other identifying characteristics of the
36 plaintiff from public revelation.

37 (3) Unless the plaintiff requests otherwise, ~~the court shall, at~~
38 ~~the first opportunity, issue an order that~~ *and the court so orders,*
39 *the parties, their counsel and other agents, court staff, and all other*
40 *persons subject to the jurisdiction of the court shall make no public*

1 revelation of the name or any other identifying characteristics of
2 the plaintiff.

3 (4) As used in this subdivision, “identifying characteristics”
4 includes, but is not limited to, name or any part thereof, address
5 or any part thereof, city or unincorporated area of residence, age,
6 marital status, relationship to defendant, and race or ethnic
7 background.

8 (5) *The responsibility for excluding or redacting the name or*
9 *identifying characteristics of the plaintiff from all documents filed*
10 *with the court rests solely with the parties and their attorneys.*
11 *Nothing in this section requires the court to review pleadings or*
12 *other papers for compliance with this provision.*

13 (f) *In an action pursuant to this section, the plaintiff shall state*
14 *in the caption of the complaint “ACTION BASED ON CIVIL CODE*
15 *SECTION 48.95.”*

16 (g) *Nothing in this section shall be construed to alter or negate*
17 *any rights, obligations, or immunities of an interactive service*
18 *provider under Section 230 of Title 47 of the United States Code.*
19 *Nothing in this section shall be construed to limit or preclude a*
20 *plaintiff from securing or recovering any other available remedy.*

21 (h) *The provisions of this section are severable. If any provision*
22 *of this section or its application is held invalid, that invalidity shall*
23 *not affect other provisions or applications that can be given effect*
24 *without the invalid provision or application.*

25 (i) *This section shall become operative on July 1, 2015.*

26 SEC. 2. *The Judicial Council shall, by July 1, 2015, develop*
27 *the confidential information form specified in subdivision (e) of*
28 *Section 48.95 of the Civil Code.*